IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3688 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NIKOL GRAM PANCHAYAT

Versus

ISUBHA PRAHLADSINGH ZALA

Appearance:

1. Special Civil Application No. 3688 of 2001

MR MRUGEN K PUROHIT for Petitioner No. 1

MR MITUL K SHELAT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 22/02/2002

ORAL JUDGEMENT

Heard the learned advocate Mr. M.K. Purohit for the petitioner and Mr.Mitul Shelat, learned advocate for the respondent. In this petition, the petitioner is challenging the award made by the labour court concerned

in Reference (LCA) No. 2280 of 1995 dated 18th January, 2001 wherein the labour court has granted reinstatement with continuity of service with full back wages for the intervening period of Rs.1000.00. Learned advocate Mr. Purohit has submitted that this award has been made in absence of the petitioner. He has submitted that since the petitioner has not remained present before the labour court, the labour court has made ex parte award wherein the labour court has granted reinstatement with continuity of service with full back wages for the intervening period. According to him, total service of the workman concerned is about one year and he has completed almost 279 days but the labour court has considered the technical aspect of the matter namely breach of section 25-F of the Industrial Disputes Act, 1947 and has granted reinstatement with continuity of service, with full back wages for the intervening period. He has further submitted that in view of the interim order passed by this court on 22nd May, 2001, the respondent has been reinstated in service in June, 2001 and at present, he is in service of the petitioner. He has submitted that the service of the respondent was terminated on 15th June, 1995 and thereafter, industrial dispute was raised on 13th October, 1998 and the matter was thereafter referred to the labour court for adjudication and thereafter award was made by the labour court on 18th January, 2001 and it was published on 17th April, 2001. He has, thus, submitted that the respondent who has worked for about one year as a recovery clerk is getting back wages for such a long period only because of the technical breach. He submitted that the matter has remained pending before the labour court for about five years and thereafter award was made by the labour court in absence of the petitioner. He has further submitted that the award in question qua back wages is totally unwarranted because reinstatement has been granted only on account of breach of section 25-F of the Act and, therefore, the labour court ought not to have granted back wages for such a long period since there was no fault on the part of the petitioner.

He has relied upon the decision of the apex court in case of Management of M.C.D. versus Prem Chand Gupta, reported in AIR 2000 SC 454 and has submitted that once the matter has been pending before the labour court for a pretty long period, then, the question of back wages has to be considered by considering that there is no fault on the part of the petitioner for such a long period. He has submitted that the petitioner being a public body, it ought not to have awarded the back wages in view of the principles laid down by the apex court in the aforesaid

decision. He has, therefore, submitted that the award in question is required to be modified in so far as it relates to the back wages.

On the other hand, learned advocate Mr. Mitul K. Shelat appearing for the respondent workman has submitted that the respondent has completed 279 days' work during the period of twelve months and therefore, considering the provisions of section 25-F of the Industrial Disputes Act, 1947, the labour court has granted reinstatement having regard to the aforesaid provisions and the respondent has remained out of job during the aforesaid period and, therefore, the labour court has been justified in making the award in question and, therefore, this court should not interfere with the award in question.

I have considered the submissions made by the learned advocates for the parties. It is clear that the award in question has been made by the labour court in absence of the petitioner. It is also clear that the respondent has worked for 279 days alone during the period of twelve calendar months and has been granted reinstatement only in view of the non compliance of the provisions of sec. 25-F of the Industrial Disputes Act. These are the facts which are not disputed by either of the parties. In light of these undisputed facts, the view taken by the apex court in case of Management of M.C.D. versus Prem CHand Gupta, reported in AIR 2000 SC 454 SC 1253 is required to be considered.

In aforesaid decision, the apex court has considered the question of back wages. Considering the facts of the present case, section 25-F of the Industrial Disputes Act, 1947 has been violated by the petitioner and, therefore, order of termination has become non est as per the decision of the apex court reported in AIR 1981 SC 1253. Therefore, according to my view, the award in question, in so far as it relates to reinstatement with continuity of service, is quite legal and proper. However, in so far as the back wages awarded by the labour court are concerned, according to my view, in view of the principles laid down by the apex court in aforesaid decision, the labour court has erred in granting back wages for a period of about five years or so to a workman who has completed only about 279 days work and has been given reinstatement only in view of the technical breach of sec. 25-F of the Industrial Disputes Act, 1947.

Recently, the apex court has considered this

aspect in case of Management of M.C.D. v. Prem Chand Gupta reported in AIR 2000 SC 454. In Para 16 of the said decision, the apex court has held as under :

"16. To recapitulate, it is a well established fact on the record of this case that the respondent workman though initially appointed for one year from 5.5.1964 on a temporary post of section officer (civil) was continued in service after expiry of that year. His very appointment order of 5.5.1964 mentioned that he could be considered for confirmation after one year of satisfactory service. Even though he was never confirmed, the appellant corporation did not terminate his services but continued him in service. Not only that but on 1.10.1964 after giving a short break in service and he was reappointed against a vacant post caused by termination of service of another employee. Thus, at least from 1.10.1964, even though in temporary service, he continued to work on a vacant permanent post of section officer (civil) and continued to serve as such for further 18 months upto 29.4.1966 when he was visited with the impugned termination order. By that time, he had completed not less than 240 days of continuous service for one calendar year immediately preceding 29.4.1966 i.e. from 1.4.1965 to 29.4.1966. Consequently, Section 25-F of the I.D. Act 1947 got squarely attracted in his case, it reads as follows :

'25-F. Conditions precedent to retrenchment of workman.- no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c) notice in prescribed manner is served on the

appropriate Government (or such authority as may be specified by appropriate Government by notification in the Official Gazette.)'

It is not in dispute between the parties that these requirements were not complied with by the appellant corporation while terminating the respondent workman's service. The Labour Court rightly held accordingly. However, having so held on facts, the labour court found that section 25-F would not apply for the reason that the respondent workman's services were not terminated because of his being an excess staff. The said reasoning of the Labour Court ran parallel to the earlier decisions of this Court which had taken such a view on interpretation of Section 25-F But the said line of reasoning no longer held the field in the light of the later decisions of this Court. In the case of The State Bank of India v. Shri N. Sundara Money (1976) 1 SCC 822 : (AIR 1976 SC 1111 : 1976 Lab IC 769), a three Judge Bench of this Court interpreting section 25-F read with section 2(oo) of the ID Act, speaking through Krishna Iyer J.in para 9 of the report clearly laid down that in section 2(oo) the word "termination for any reason whatsoever " is the key word. Whatever the reason, every termination spells retrenchment. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. The said decision of the three Judge Bench was approved by a Constitution Bench of this Court in the case of Punjab Land Development and Reclamation Corporation Ltd., Chandigarh v. Presiding Officer, Labour Court, Chandigarh (1990) 3 SCC 682. In view of this settled legal position, therefore, it must be held that termination of services of the respondent workman on 29.4.1966 which was admittedly not by way of punishment clearly amounted to retrenchment attracting Section 25-F of the I.D. Act."

In para 18 and 19 of the decision, the apex court has observed as under :

"18. We have now reached the stage for considering appropriate relief to be granted in the light of our findings on point no. 2. Once it is held that termination of the respondent

workman on 29.4.1988 was null and void being violative of section 25-F of the I.D. Act, the logical consequence would be that he would be entitled to be reinstated in service with continuity and in normal course would be entitled to full back wages. However, in our view on the peculiar facts of this case, it will not be appropriate to grant full back wages to the respondent workman even though he will be entitled to be reinstated in service of the appellant Corporation with continuity and all further consequential benefits on that score, save and except the grant of full back wages, as indicated hereinbelow.

19. The reasons for non granting full back wages from the date of his termination of 29.4.1966 till actual reinstatement pursuant to the present order can now be indicated. Firstly, for no fault of the contesting parties, the litigation has lingered on for more than three decades. The termination order was as early as on 29.4.1966 and after 33 years and more it is being set aside. To saddle the appellant corporation and its exchequer, which is meant for public benefit, with full back wages for entire period would be too harsh to the appellant Corporation. It is the delay in disposal of cases in the Courts that has created this unfortunate situation for both the sides. Respondent workman is also not at fault as he was clamoring for justice for all these years. However, this delay in Court proceedings for no fault of either side permits us not to burden the appellant Corporation, being a public body, with full back wages for the entire period of respondent workman's unemployment, especially when for no fault of either side actual work could not be taken from the respondent workman by the appellant corporation. It is true that the respondent workman was always willing to work but he could not be permitted to work so long as the termination order stood against him. The Labour Court as well as the learned Single Judge upheld that order. Only the Division Bench set aside that order. This Court at SLP Stage itself while granting leave stayed reinstatement order on 17.11.1997. two more years since elapsed during the pendency of this appeal before this Court. All these factors together point in the direction of not saddling the appellant corporation a

public body with the burden of entire full back wages to be granted to the respondent workman after the passage of 33 years since his order of termination. The second reason is that the respondent workman for all these years could not have remained totally unemployed though there is no clear evidence that he was gainfully employed and was so well off that he should be denied complete back wages. But keeping in view the fact that for all these long years fortunately the respondent workman had survived and has still two more years to reach the age of superannuation as we are told, not granting him full back wages on the peculiar facts of this case, would meet the ends of justice. We, therefore, following order.

1. The impugned order of the Division Bench of the High Court in so far as it holds that the termination order of the respondent workman dated 29.4.1966 was violative of rule 5 of the relevant rules is set aside.

2. However, the final order passed by the High Court ordering reinstatement of the respondent workman with continuity of service is upheld on the alternative ground holding termination of services of the respondent workman on 29.4.1966 to be violative of section 25-F of the I.D. Act.

3. So far as back wages are concerned, the impugned order of the High Court is modified by directing that the respondent workman will be entitled to get 50 per cent of back wages from the date of his termination i.e. from 29.4.1966 till his actual reinstatement in service of the appellant corporation with continuity of service. The respondent workman will also be entitled to all other consequential benefits including increments in the available time scale and revisions of the time scale, if any, and also further service benefits as per the rules and regulations of the appellant Corporation being treated to have been in continuous service of the appellant Corporation from 29.4.1966 all

> through out till reinstatement. The appellant Corporation shall reinstate the respondent workman with continuity of service within eight weeks from today and will also pay 50 per cent back wages as directed hereinabove within that period. The appellant corporation will grant all other consequential benefits to the respondent workman in light of this judgment. Appeal stands allowed as aforesaid with no order as to costs in the facts and circumstances of the case."

Therefore, in view of the principles laid down by the apex court in aforesaid two decision, the award in question in so far as it relates to back wages part alone, is required to be modified by this Court. According to my opinion, since the petitioner has remained out of job for a period of about five years and since there was also no any fault on his part for pendency of the matter before the labour court and since he has afterwards been reinstated in service in terms of the interim order passed by this Court as stated above, it would be just and proper and would met ends of justice if the back wages are reduced to 25 per cent alone instead of 100 per cent as has been granted by the labour court. To that extent, the award in question is required to be modified.

For the reasons recorded hereinabove, this petition is partly allowed. The award made by the labour court in aforesaid reference is modified in so far as it relates to back wages. Instead of full back wages for the intervening period, as has been granted by the labour court concerned under the award in question, petitioner is directed to pay 25 per cent of the back wages to the respondent workman for the intervening period, from the date of termination of his service till the date of his actual reinstatement. It is however clarified that the award in question in so far as it relates to reinstatement with continuity of service, has not been disturbed by this Court and the same shall remain in tact. The award shall stand modified in aforesaid terms. Rule is made absolute accordingly with no order as to costs.

22.2.2002. (H.K. Rathod,J.)

Vyas